

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| JOAN M. MAVRINAC, M.D., M.PH.,   | ) |                          |
|                                  | ) |                          |
| Plaintiff,                       | ) |                          |
|                                  | ) |                          |
| v.                               | ) | Civil Action No 04-1880  |
|                                  | ) | Judge Nora Barry Fischer |
|                                  | ) |                          |
| EMERGENCY MEDICINE               | ) |                          |
| ASSOCIATION OF PITTSBURGH        | ) |                          |
| (EMAP), MERCY HOSPITAL OF        | ) |                          |
| PITTSBURGH, PITTSBURGH MERCY     | ) |                          |
| HEALTH SYSTEM, and BRUCE A.      | ) |                          |
| MACLEOD, M.D., FACEP,            | ) |                          |
| INDIVIDUALLY and IN HIS OFFICIAL | ) |                          |
| CAPACITY,                        | ) |                          |
|                                  | ) |                          |
| Defendants.                      | ) |                          |

**ORDER OF COURT REGARDING WEST PENN WITNESSES**

AND NOW, this 12th day of September, 2007, upon consideration of Plaintiff's Second Motion in Limine to Preclude Documents Not Identified by Defendants The Mercy Hospital of Pittsburgh and Pittsburgh Mercy Health System During Discovery and Related Witness Testimony (Docket No. 139) and Memorandum of Law in Support (Docket No. 139-3), Defendants response thereto (Docket No. 182), Defendants' Letter Brief (Docket No. 206), Plaintiff's response thereto (Docket No. 208), and oral argument before this Court, this Court HEREBY ORDERS that Plaintiff's Motion is DENIED.

Federal Rule of Civil Procedure 37(c)(1) states that if a party fails to provide information of identify of a witness as required by Rule 26(a) or (e), the party is not allowed to use this information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure

was substantially justified or is harmless. Due to the fact that former co-defendants EMAP and Dr. Macleod identified “Dr. Tom Campbell and or other designated representative of West Penn Hospital” in their Rule 26 (a)(1) Initial Disclosures, the Defendant’s failure to identify B.J. Meade as a witness is harmless to Plaintiff. As set forth in a recent opinion by Judge McVerry, “the advisory Committee Commentary to the 1993 Amendment of Rule 37(c) cites this precise situation as an example of a harmless error.” *Sonnier v. Field*, No. 05-14, 2007 U.S. Dist. WL 2155576, at \*6 (W.D. Pa. July 25, 2007). This Court further orders that Plaintiff shall be given the opportunity to depose Ms. Meade prior to trial and that the Defendants will be responsible for all costs of such deposition, including the court reporter, transcription, and any witness fees.

BY THE COURT:

*s/ Nora Barry Fischer*

Nora Barry Fischer  
United States District Judge

cc/ecf: counsel of record